NO. 22523

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

DAVID LEROY DANIELS,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

APPELLEE'S BRIEF

APPEAL FROM
THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

WM. MATTHEW BYRNE, JR.,
United States Attorney,
ROBERT L. BROSIO,
Assistant U. S. Attorney,
Chief, Criminal Division,
ARNOLD G. REGARDIE,
Assistant U. S. Attorney,

1221 U. S. Court House
312 North Spring Street
Los Angeles, California 90012

Attorneys for Appellee,
United States of America.

NO. 22523

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

DAVID LEROY DANIELS,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

APPELLEE'S BRIEF

APPEAL FROM
THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

WM. MATTHEW BYRNE, JR.,
United States Attorney,
ROBERT L. BROSIO,
Assistant U. S. Attorney,
Chief, Criminal Division,
ARNOLD G. REGARDIE,
Assistant U. S. Attorney,

1221 U. S. Court House
312 North Spring Street
Los Angeles, California 90012

Attorneys for Appellee,
United States of America.

TOPICAL INDEX

TABLE OF AUTHORITIES

Statutes

Rules and Regulations

Misc.

NO. 22523

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

DAVID LEROY DANIELS,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

APPELLEE'S BRIEF

I

JURISDICTIONAL STATEMENT

Appellant, DAVID LEROY DANIELS, was indicted by the Federal Grand Jury for the Northern Division of the Southern District of California on June 17, 1965, under No. 4187-CD [C. T. 1-2]. 1/ The indictment charged a violation of Title 50 App., United States Code, Section 462, Universal Military Training and Service Act, Failure to Report to Local Board.

Appellant was originally tried without a jury before the Honorable M. D. Crocker, U. S. District Judge, on June 18,

---

1/ "C. T." refers to Clerk's Transcript of Proceedings.

1965 and found guilty as charged. Subsequently, the appellant's conviction was reversed on appeal [2/] and he was retried without a jury before the same court on August 4, 1967. Appellant was again found guilty as charged and on September 29, 1967, was sentenced to the custody of the Attorney General of the United States for a period of three years [C. T. 20].

Appellant's Notice of Appeal was timely filed on October 9, 1967 [C. T. 21].

The jurisdiction of the District Court was based upon Title 50 U. S. C. App. §462, Title 18 U. S. C. §3231 and Rule 18 of the Federal Rules of Criminal Procedure. This Court has jurisdiction to review the judgment of the District Court pursuant to Title 28 U. S. C. §§ 1291 and 1294 and Rule 37(a) of the Federal Rules of Criminal Procedure.

II

STATUTE INVOLVED

Title 50 U. S. C. App. §462, provides in pertinent part as follows:

> "Any member of the Selective Service System or any other person charged as herein provided with the duty of carrying out any of the provisions of this title . . . or the rules or

---

2/ See Daniels v. United States, 372 F. 2d 407 (9th Cir. 1967).

regulations made or directions given thereunder, who shall knowingly fail or neglect to perform such duty . . . or who otherwise evades or refuses . . . service in the armed forces or any of the requirements of this title . . . or who in any manner shall knowingly fail or neglect or refuse to perform any duty required of him under or in the execution of this title . . . or rules, regulations or directions made pursuant to this title . . . shall, upon conviction in any district court of the United States of competent jurisdiction, be punished by imprisonment for not more than five years or a fine of not more than $10,000, or by both. . . ."

III

QUESTIONS PRESENTED

1. Was the appellant legally entitled to a classification as a Minister of Religion or divinity student (IV-D)?

2. May the appellant now claim that the work to which he was assigned was inappropriate, after refusing to designate any work he would perform in lieu of military service?

IV

STATEMENT OF FACTS

At the commencement of the trial of this case a paginated photographic copy of the official Selective Service File of appellant was offered and admitted in evidence as Government's Exhibit No. 1 [R. T. 3/17-24]. 3/ This copy had attached to it a certificate by Major Malcolm F. Miller, U. S. A. F., District Coordinator, Selective Service System, Los Angeles, California, that it was a full, true and correct copy of the original file of which he had legal custody. Also attached was a certificate and seal of Captain T. D. Proffitt, USAF (Ret.), Area Coordinator, Selective Service System, Los Angeles, California to the effect that Major Miller was the District Coordinator and had legal custody of the original selective service file of the appellant.

This file revealed the following events with respect to appellant's registration status in the Selective Service System:

On November 10, 1960, appellant registered with Local Board 68, hereinafter referred to as the Board (Ex. 1, pp. 1-2).

On October 9, 1963, the Board received from appellant a completed Classification Questionnaire (Form SSS No. 100) (Ex. 1, pp. 4-9), wherein appellant stated in response to Series VIII- Conscientious Objector, that he claimed exemption from military service as a conscientious objector (Ex. 1, p. 7).

3/ "R. T." refers to Reporter's Transcript of Record.

On October 21, 1963, the Board received a completed special form for Conscientious Objector (SSS Form No. 150) (Ex. 1, pp. 47-50).

On November 19, 1963, the Board, by a vote of 2-0, classified appellant in Class 1-O. On the same date a notice of such classification was mailed to appellant (SSS Form 100) (Ex. 1, p. 11).

On November 26, 1963, the appellant appealed his classification to the Appeal Board and requested a personal appearance (Ex. 1, p. 57).

On February 10, 1964, appellant appeared for a personal interview at the Board, at which time he stated that he spent 17 to 18 hours per week as a Jehovah Witness Minister, was not a "Pioneer", and could not accept cilivian work. On this same date the Board again classified appellant in Class 1-O (Ex. 3, p. 11). On February 12, 1964, notice of his classification was mailed to appellant (SSS Form No. 110) (Ex. 1, pp. 11, 61).

On May 15, 1964, appellant was ordered to report for an Armed Forces Physical Examination (Ex. 1, p. 62). On June 2, 1964, the appellant reported for the physical examination (Ex. 1, pp. 63-73), and was found physically acceptable (Ex. 1, p. 74).

On July 2, 1964, pursuant to appellant's appeal of his classification, his file was forwarded to the Appeal Board (Ex. 1, p. 75). On July 23, 1964, the Appeal Board, by a vote of 3-0, classified appellant 1-O (Ex. 1, p. 76). On July 28, 1964, appellant was mailed a notification of his classification (SSS Form

110) (Ex. 1, p. 11).

On August 11, 1964, the appellant returned uncompleted Special Form for Class 1-O Registrants (SSS Form 152), in which, in response to a request for a choice of three civilian job assignments, Series I-Work Qualifications, he stated that he could not accept any work due to his religious beliefs (Ex. 1, pp. 77-80 at p. 78).

On September 8, 1964, the appellant was mailed a letter offering him three types of civilian work in lieu of induction (Ex. 1, p. 85).

On September 21, 1964, the Board received from appellant its September 8, 1964 letter, returned with the statement signed by appellant "I do not wish to perform any of the types of work listed above". In an attached letter appellant stated in substance his conscientious objection to such work (Ex. 1, pp. 85, 86).

On November 16, 1964, appellant appeared at the Board for a meeting to attempt to reach an agreement on an approved civilian work assignment. At the meeting he stated he would refuse any approved job under this program offered by the Board, as being contrary to his belief (Ex. 1, pp. 90, 91, 92). The appellant further signed a statement that he "will refuse to report for work of national importance if ordered to do so by my own local board or by any other local board" (Ex. 1, p. 92).

On December 11, 1964, the Board mailed to appellant an order to report to the Board at 8:00 a. m. on January 4, 1965,

where he would be given instructions to proceed to a place of civilian work contributing to the maintenance of national health, safety or interest. The Board at that time specified the Los Angeles Department of Charities, 1200 North State Street, Los Angeles, California, as an approved civilian work assignment (Ex. 1, p. 99).

On January 4, 1965, appellant failed to appear at the Board or at the Los Angeles Department of Charities (Ex. 1, pp. 98, 99).

V

ARGUMENT

A. APPELLANT DID NOT MAKE OUT A PRIMA FACIE CASE FOR A MINISTERIAL EXEMPTION; THEREFORE THERE WAS A BASIS IN FACT FOR A CONSCIENTIOUS OBJECTOR CLASSIFICATION.

1. Judicial consideration of appellant's classification must be limited to the question of whether or not there was a basis in fact for the classification given the appellant by his local board. It is well settled that judicial review of a registrant's classification is exceedingly narrow and limited in scope. Congress has provided that the decisions of local boards shall be final, except in certain instances.

Title 50 App. U.S.C. §460(b)(3).

The Supreme Court took the position in United States v. Estep, 327 U.S. 114, 122 (1946) that the jurisdiction of the local board is reached only if there was no basis in fact for the classification given to the registrant. The Supreme Court has reiterated the stand adopted in Estep in subsequent decisions. Attention is direct to Eagles v. United States, ex rel Samuels, 329 U.S. 304 (1946); Gibson v. United States, 329 U.S. 338 (1946); Cox v. United States, 332 U.S. 442 (1947); United States v. Nugent, 346 U.S. 1 (1953); Dickinson v. United States, 346 U.S. 389 (1953); and Witmer v. United States, 348 U.S. 375 (1955).

In the case of Swaczyk v. United States, 156 F.2d 17, 19 (1st Cir. 1946), cert. denied 329 U.S. 726, the court stated:

> " 'It should be remembered that immunity from military service arises not as a matter of constitutional grant, but by virtue of Congressional deference to conscientious religious views . . . . The burden, therefor, is not upon the Government, but upon one claiming exemption to bring himself clearly within the exempted class . . . .
>
> "Unless, then the registrant can establish the complete lack of a factual basis for his classification, or, perhaps, some controlling bias or prejudice against him, his defense is ineffectual . . . .' "

Having thus set forth the foregoing fundamentals, consideration must next be given to the question of whether the local

board's denial of a ministerial exemption to the appellant is without any basis in fact.

2. The appellant did not establish that he is nor has he claimed to be, a leader of a Jehovah's Witness Congregation. He bases his claim for a ministerial exemption on the fact that he is recognized as an ordained minister by his sect. The issue thus raised is whether any of the members of Jehovah's Witnesses meet the statutory criteria for ministerial exemption.

The Universal Military Training and Service Act exempts from military training and service persons who are regular or duly ordained ministers of religion. See 50 U.S.C. App. §456. These terms are defined in 50 U.S.C. §466(g) as follows:

> "(1) The term 'duly ordained minister of religion' means a person who has been ordained, in accordance with the ceremonial, ritual, or discipline of a church, religious sect, or organization established on the basis of a community of faith and belief, doctrines and practices of a religious character, to preach and to teach the doctrines of such church sect, or organization and to administer the rites and ceremonies thereof in public worship, and who as his regular and customary vocation preaches and teaches the principles of religion and administers the ordinances of public worship as embodied in the creed or principles of such church, sect, or organization.

"(2) The term 'regular minister of religion' means one who as his customary vocation preaches and teaches the principles of religion of a church, a religious sect, or organization of which he is a member, without having been formally ordained as a minister of religion, and who is recognized by such church, sect, or organization as a regular minister.

"(3) The term 'regular or duly ordained minister of religion' does not include a person who irregularly or incidentally preaches and teaches the principles of religion of a church, religious sect, or organization and does not include any person who may have been duly ordained a minister in accordance with the ceremonial, rite, or discipline of a church, religious sect or organization, but who does not regularly, as a vocation, teach and preach the principles of religion and administer the ordinances of public worship as embodied in the creed or principles of his church, sect, or organization."

Senate Report No. 1268, 80th Congress, 2d Session, dated May 12, 1948, offers substantial insight into the legislative intent and purpose behind the Act. This report states at page 13:

". . . Serious difficulties arose in the

administration and enforcement of the 1940 Act because of the claims by members of one particular faith that all of its members were ministers of religion. A minority of the Supreme Court thought that Congress intended to grant an exemption broad enought to include this group. (See the dissenting opinions in Cox v. United States, 332 U.S. 442, 455, 457 [68 S. Ct. 115, 92 L.Ed. 59]). In order that there may be no misunderstanding of the fact that the exemption granted is a narrow one, intended for the leaders of the various religious faiths and not for the members generally, the terms 'regular or duly ordained ministers of religion' have been defined in section 16(g). The definition is that which was contained in the 1917 Selective Service Regulations and which was successfully administered without the problems which arose under the 1950 Act." (Emphasis added).

The view of the majority in Cox v. United States, 332 U.S. 442, decided under the 1940 Act, was given subsequent approval in the above quoted legislative history of the 1948 Act. It is clear that Congress had the Jehovah's Witnesses in mind in reverting to the 1917 definition of 'regular or duly ordained ministers of religion.'

The Supreme Court has held that no person can be

classified as a minister merely because of some title which he holds in the sect of which he is a member. In effect the court held in Dickinson v. United States, supra, that regardless of title each person claiming a ministerial exemption must be measured against the rigid statutory requirements provided by Congress. The court stated at page 394:

> "The ministerial exemption, as was pointed out in the Senate Report accompanying the 1948 Act, 'is a narrow one, intended for the leaders of the various religious faiths and not for the members generally.' S. Rep. No. 1268, 80th Cong., 2d Sess. 13. Certainly all members of a religious organization or sect are not entitled to the exemption by reason of their membership, even though in their belief each is a minister. Cf. Cox v. United States, 332 U.S. 442 [68 S. Ct. 115, 92 L.Ed. 59] (1947). On the other hand, a legitimate minister cannot be, for the purposes of the Act, unfrocked simply because all the members of his sect base an exemption claim on the dogma of its faith. That would leave a congregation without a cleric. Each registrant must satisfy the Act's regid criteria for the exemption. Preaching and teaching the principles of one's sect, if performed part-time or half-time, occasionally or irregularly, are insufficient to bring a registrant under §6(g). These activities must be

regularly performed. They must, as the statute reads, comprise the registrant's 'vocation'. And since the ministerial exemption is a matter of legislative grace, the selective service registrant bears the burden of clearly establishing the right to the exemption."

It is inconceivable that Congress intended to include within its definition of ministers one hundred percent of any congregation. Many lay officials in various religious denominations devote long hours and much energy to their religious activities without claiming that they are thereby made ministers of religion.

Turning to the evidence in the instant case and guided by the foregoing standards, it is clear that the appellant was not engaged in ministerial activity as a "regular and customary vocation". By the appellant's own words, the longest consecutive period prior to January 1, 1965, that he was employed as a pioneer or a vacation pioneer was two months [R. T. 34/3]. (A Pioneer must devote 100 hours a month to ministerial activities in the field. In computing the 100 hours, time spent in reading or preparation for field work is not counted. Vacation Pioneers are appointed for a two-week to three-month period and are not regarded as regularly appointed, full Pioneers.) [4/] Burnis L. Daniels, the

---

4/ See R. T. 15, 18, 19 and United States v. Tettenburn, 186 F. Supp. 203, 208 (D. C. Md. 1960).

appellant's brother, stated that the appellant served as a vacation pioneer "at some times" [R. T. 18/15], and further stated that on the average the appellant spent 30 hours a month in the actual ministry itself [R. T. 19/12-13]. And, even while he was engaged as a vacation pioneer, the appellant was gainfully employed [R. T. 34].

The appellant further stated that during his life, up to 1965, he looked forward to the time when he "could engage in full time ministry work" and get in a field to support himself and engage in ministry full time [R. T. 26/18-20, 27/12-15]. Thus, judging from the testimony adduced at the trial, at no time up to the time he refused to report for civilian employment, was the appellant engaged in full-time ministerial work.

This conclusion is further buttressed by Exhibit 1, the appellant's selective service file. At the time the appellant filed his Classification Questionnaire, October 9, 1963, he was working an average of 40 hours a week packing and shipping raisins (Ex. 1, p. 6). He stated at that time that time that his goal was to become a "full time pioneer," i. e., one who devotes 100 hours a month to field work (Ex. 1, p. 9). At the time of his personal appearance before the local board on February 10, 1964, to express his dissatisfaction with his 1-O classification, he stated that he was not a Pioneer, although he had served as a vacation Pioneer, that he was unemployed and is looking for work, and that he spent from 17-18 hours per week as a minister (Ex. 1, p. 61). This is consistent with the statement he made to the board on October 21,

1963, when he filed his Special Form For Conscientious Objector, when he acknowledged spending 20 hours a week in ministerial activities (Ex. 1, p. 48, item 6), which time is stated to include both study and field work. These activities apparently included serving as a Congregation Book Study Conductor, wherein he had oversight of fifteen people (Ex. 1, p. 49, series IV, item 3, R. T. 19/17-18) but not as a Congregation Servant, who is the presiding minister and overseer of all congregation activities.

On November 16, 1964, appellant was interviewed pursuant to 32 C. F. R. §1660.20 to determine the type of civilian employment best suited for him. At that time the appellant indicated that he was averaging approximately 14 hours a week in ministerial work (Ex. 1, p. 91).

It is clearly evident that despite his declarations to the contrary (App. Br. pp. 5, 8), appellant did not engage in ministerial work in the Jehovah's Witnesses as a vocation. And while appellant further argues that the Act does not use the words "full time" (App. Br. p. 8), it can scarcely be contended that one cannot pursue a vocation without devoting all or substantially all of one's time thereto.

It is submitted that appellant is expressly covered by the language of 50 App. U. S. C. §466(g)(3), supra, p. 10. Reviewing the evidence as to the appellant's ministerial activity, when measured against the evidence submitted by defendants in other cases, it must be concluded the appellant is no more convincing in his claim than others have been. In the Cox case, supra, the

Supreme Court affirmed the convictions of three registrants. The first one, Cox, had information in his file showing that he averaged 150 hours a month in religious activities outside of his secular work. Another registrant, Thompson, had information in his file indicating that he had devoted over 500 hours to field service; however, he submitted no evidence of changed activity in operating his grocery store. The file of a third registrant, Roisum, who was a Book Study Conductor, as was the appellant here, showed that his secular activity was farming.

The Ninth Circuit in Badger v. United States, 322 F. 2d 902 (1963) upheld the board's denial of a ministerial exemption to a Jehovah's Witness registrant who at one point was devoting 30 to 35 hours per month to the ministry and, at another point, 20-25 hours per week. The court specifically determined, at page 908, that under such circumstances "the board would have been justified in concluding that appellant's work as a minister was still not vocational". The Ninth Circuit followed Badger in the very recent case of Langhorne v. United States, No. 21,910, decided April 29, 1968, wherein the court denied a ministerial exemption to a Jehovah's Witness who devoted not more than ten hours a week to ministerial work.

Other circuits have reached the same conclusion. See e.g. Neal v. United States, 203 F. 2d 111 (5th Cir. 1953), cert. denied 345 U.S. 996; Bradshaw v. United States, 242 F. 2d 180 (10th Cir. 1957); Capehart v. United States, 237 F. 2d 388 (4th Cir. 1956); and United States v. Diercks, 223 F. 2d 12 (7th Cir. 1955).

3. It is thus submitted that the local board's decision to deny the appellant a ministerial exemption and classify him as a conscientious objector was not without basis in fact and, further, that a holding in this case to that effect would be in line with the Ninth Circuit's decision in Badger and Langhorne, supra, other circuit decisions and the decisions of the Supreme Court. Far from making out a prima facie case for a ministerial exemption, appellant's claim thereto is clearly rebutted by the evidence in his file and the testimony adduced at trial.

Appellant cites the Dickinson case supra for the proposition that "[i]t was incumbent on the board to place adverse evidence in the file, as a justification for rejecting his claim." (App. Br. p. 6). This point was also raised in the Badger case, supra, and since the court's response covers the situation at bar, it is quoted in its entirety:

> "The Dickinson case points out that local boards are not courts of law bound by traditional rules of evidence and that they are given leeway in hearing and considering a variety of material as evidence. Moreover, the registrant bears the burden of clearly establishing an exemption. Reviewing courts may insist, however, that there be some proof that is incompatible with the registrant's proof of exemption. Therefore, is proof exists in the record before us which is incompatible with appellant's claim, the evidentiary burden of the

board is satisfied under the Dickinson case."

Badger v. United States, supra, at p. 906

(Emphasis added).

As pointed out above, appellant's file is replete with evidence which is incompatible with his claimed ministerial exemption. Therefore, his claim must fall. It cannot be said that appellant produced any evidence, beyond a mere title of "Minister", which all Jehovah's Witnesses hold, to show that he occupied a position of spirtual leadership and that the preaching and teaching of his religion was his customary vocation.

Appellant also cited Wiggins v. United States, 261 F. 2d 113 (5th Cir. 1958) in support of his position that he is entitled to a ministerial exemption (App. Br. p. 9). It is submitted that this is not controlling, in view of the decisions of the Supreme Court in the Cox and Dickinson cases, supra, the intention of Congress as set out previously in this brief, and the decisions in this and other circuits cited above.

4. Lastly, it should be pointed out that in a memorandum to the National Selective Service Appeal Board, dated June 25, 1958, Mr. Hayden C. Covington, General Counsel for Jehovah's Witnesses, advised that it would not be the policy of the Jehovah's Witnesses to press for ministerial status for anyone below the rank of Pioneer. Mr. Covington's comments in this regard are as follows: 5/

5/ See United States v. Tettenburn, supra, at 208-209.

"19. Will the Society agree that it will not press for ministerial status for anyone under the rank of pioneer?

"Yes, except in the case of the congregation servant who is devoting a substantial amount of his time, not as a pioneer, which together with his duties as a congregation servant makes his ministry his vocation and not his avocation. The Society is interested in defending only those persons who qualify for the exemption under the law of the land. On such basis it does not contend that every minister in the organization is entitled to the exemption. Only those ministers who meet the definition of vocation required by the statute are entitled to be given the exemption and these the Society can legally defend."

Appellant thus can scarcely contend that he is entitled to a ministerial exemption in the face of a clear policy pronouncement by the Watchtower Bible and Tract Society (the governing body for Jehovah's Witnesses) that only those ministers who meet the definition of vocation required by the statute are entitled to the exemption. It is interesting to note that the testimony of appellant's brother on this point is directly contrary to the foregoing policy statement [R. T. 23/25, 24/1-4].

B. APPELLANT'S REFUSAL TO DESIGNATE APPROPRIATE CIVILIAN EMPLOYMENT PRECLUDES HIS CLAIM THAT THE WORK TO WHICH HE WAS ASSIGNED WAS INAPPROPRIATE.

---

1. Appellant's selective service file reveals that at no time during his processing before the board did he agree to perform any civilian work in lieu of military service. In the Special Report For Class 1-O Registrants, filed August 11, 1964, appellant stated that he could not "perform any such work due to my standings and beliefs." (Ex. 1, p. 78). Appellant refused to perform three types of work suggested to him by the board on September 8, 1964 (Ex. 1, p. 85), explaining that to do so would be "still contributing to the interests of the Government." (Ex. 1, p. 86). During an interview arranged under the provisions of 32 C.F.R. §1660.20(c), appellant again refused to perform any work suggested to him, did not suggest any work he was willing to perform and stated that he was unwilling to perform any work as a 1-O registrant and would refuse to report for work of national importance if ordered to do so by his or any other board (Ex. 1, pp. 90-92). Following this interview, it was determined that work as an Institutional Helper at the Los Angeles Department of Charities was appropriate and was available (Ex. 1, p. 91).

This position of resolute refusal to perform any work of national importance was also taken by the appellant during his trial [R.T. 28-33]. Appellant further elaborated on his stand by stating

that he objected to being on call [R. T. 29/4-8] and objected to the handling of blood [R. T. 29/22-25, 30/1-4].

2. It is submitted that this issue is covered aptly by the Ninth Circuit's comments in the case of Langhorne v. United States, supra, where the court held:

> "Section 456(j) of Title 50 App. U. S. C. provides that a person classified as a conscientious objector may be 'ordered . . . to perform . . . such civilian work . . . as the local board may deem appropriate . . . .' Appellant, after taking the position throughout the administrative hearing and at the trial that he was not going to perform any work in lieu of military service, now argues that the work to which he was assigned was not appropriate. If we assume that the word 'appropriate' means appropriate to the particular registrant, and if we make the violent assumption that the objections now made are otherwise valid, they come too late. The regulations give the registrant an opportunity to participate in the selection of an appropriate assignment. Appellant, given all of the opportunities provided by the regulations, neither suggested an appropriate assignment nor made specific objections to assignments suggested by the selective service personnel. We hold that a registrant may not overturn the action of the board

ordering him to work on any ground not disclosed to the board. A registrant may not, as did appellant, refuse any work and then later conjure up objections to the work assigned."

Appellant relies on United States v. Copeland, 126 F. Supp. 734 (D. C. Conn., 1954) to support his position that work which adversely affects the religious beliefs of a registrant is inappropriate. However, the Ninth Circuit has previously distinguished and questioned the Copeland decision. See Yaich v. United States, 283 F. 2d 613, 619 (9th Cir. 1960) and Johnson v. United States, 285 F. 2d 700, 702 (9th Cir. 1960). The Copeland case has been expressly rejected by the Seventh Circuit. See United States v. Hoepker, 223 F. 2d 921 (1955), cert. denied 350 U. S. 841.

Work as an Institutional Helper in the Los Angeles Department of Charities has many times been adjudged competent as civilian employment in lieu of induction. See Yaich v. United States, supra, at p. 619 and cases there cited.

The evident conclusion to be drawn from the foregoing authorities is that appellant's argument on this issue is without legal merit.

VI

CONCLUSION

For the foregoing reasons it is requested that the decision of the trial court be affirmed.

Respectfully submitted,

WM. MATTHEW BYRNE, JR.,
United States Attorney,

ROBERT L. BROSIO,
Assistant U. S. Attorney,
Chief, Criminal Division,

ARNOLD G. REGARDIE,
Assistant U. S. Attorney,

Attorneys for Appellee,
United States of America.

CERTIFICATE

I certify that, in connection with the preparation of this brief, I have examined Rules 18, 19 and 39 of the United States Court of Appeals for the Ninth Circuit, and that, in my opinion, the foregoing brief is in full compliance with those rules.

/s/ Arnold G. Regardie
ARNOLD G. REGARDIE